

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0609/2dn
GMM:kmg:km

December 6, 2000

Representatives Jeskewitz and Plale.

In reviewing this draft and, in particular, the provisions relating to a newborn child who has been abused or neglected, please note all of the following:

1. That the draft sticks with the ch. 48 definitions of "abuse" and "neglect" rather than cross-referencing to the criminal prohibitions against abuse and neglect, ss. 948.03 and 948.21. On further review, referencing those criminal prohibitions does not work because those prohibitions include the elements that the abuse was committed intentionally or recklessly and that the neglect was committed intentionally. A doctor examining a baby, however, can only tell that the baby has suffered physical injury and that it was no accident (abuse) or that the baby's physical health is seriously endangered due to a lack of care (neglect); the doctor cannot get into the mind of the perpetrator and determine whether the abuse was intentional or reckless or whether the neglect was intentional. Those determinations can only be made by a judge or jury after hearing evidence relating to the suspect's state of mind.
2. That the draft amends not only s. 48.195 (2) (c), as created by the draft, but also s. 48.195 (2) (a) and (b), as created by the draft, to provide that a parent who has abused or neglected his or her child does *not* have the right to remain anonymous or to leave at any time. It makes little sense to permit a law enforcement officer to attempt to locate or ascertain the identity of a perpetrator after the officer has let the perpetrator go when the best opportunity to apprehend the perpetrator is before the perpetrator has been allowed to leave.
3. That, because this redraft does not provide immunity from prosecution for abuse or neglect that takes place *before* the relinquishment, the draft removes the provisions in the previous draft exempting a person who takes a child into custody under the bill from the mandatory reporting requirement under the child abuse reporting law.

If you have any questions about this draft, please do not hesitate to contact me at the e-mail address or telephone number listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us